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COMMITTEE AGAINST TORTURE

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SUMMARY RECORD OF THE PUBLIC PART* OF THE 397th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 11 November 1999, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the closed part of the meeting appears as document CAT/C/SR.397/Add.1.

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The meeting was called to order at 10.02 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Finland (CAT/C/44/Add.6)

1. At the invitation of the Chairman, the delegation of Finland (Mr. Huhtaniemi, Mr. Lindholm, Mr. Vesterbacka, Ms. Vanamo-Alho, Mr. Sintonen, Mr. Lehmus, Ms. Hagelstam and Ms. Lehmuskoski) took places at the Committee table.

2. The CHAIRMAN was pleased to welcome the large and highly qualified delegation, which he felt demonstrated the seriousness with which Finland approached its obligations under the Convention. He invited the Ambassador to introduce the members of the delegation.

3. Mr. HUHTANIEMI (Finland) introduced the Finnish delegation and invited Mr. Lindholm, the head of the delegation, to present the Finnish report.

4. Mr. LINDHOLM thanked the Committee for the opportunity to present further information on recent measures taken on the implementation of the Convention in Finland. He said that the third periodic report had aimed at providing answers to questions and concerns raised by the Committee as a result of their consideration of the previous report. His oral report would give an overview of the developments that had taken place in the 13 months since the third periodic report had been submitted.

5. The Constitution of Finland currently provided a prohibition against torture. According to its Section 6, "No one shall be sentenced to death, tortured or otherwise treated in a degrading manner". The Committee had expressed its concern that there was no provision in the Penal Code of Finland containing a specific definition of the elements of torture and had recommended that Finland incorporate such a definition into its legislation. Finland had not, however, considered that necessary since all the acts referred to in the Convention were punishable under Finnish law. Finland had thus adopted the practice of applying general provisions, especially provisions of the Penal Code on assault, to acts referred to in the Convention, when committed by public officials. An advantage of that approach was that it decreased the number of articles in the Penal Code and hence avoided the problems of interpretation caused by close and often overlapping penal provisions.

6. The Committee had been concerned that there were no provisions in Finnish legislation specifically prohibiting the use in judicial proceedings of statements obtained under torture. It should be emphasized, in that connection, that it was illegal and punishable in Finland to obtain evidence by torture. The inadmissibility of such information was self-evident in judicial practice. Due to the existing rules of criminal procedure, emphasizing the oral and immediate nature of the judicial procedure, a statement given in the pre-trial investigation must not be used as evidence during the trial (chapter 17, section. 11, of the Code of Judicial Procedure). In practice, the rules of criminal procedure made it impossible even to try to use such a statement as evidence in court.

7. The Committee had also drawn attention to the returning of asylum-seekers, the list of safe countries and observance of article 3 of the Convention in cases of extradition, expulsion and return. The amendment to the Aliens' Act, which had entered into force in May of 1999, contained a provision concerning the grounds on which a country could be defined as a safe country of asylum. According to its section 33 (a), safe countries were those which were party to the Convention relating to the Status of Refugees, and complied with it, as well as to the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

8. Since 1997, the person responsible for the investigation of offences allegedly committed by a police officer had been the Public Prosecutor. The only exceptions were traffic offences or other minor acts, for which the maximum statutory punishment was a fine.

9. As of 1 March 1999, the Office of the Ombudsman for Aliens, previously subordinate to the Ministry of Social Affairs and Health, had been attached to the Ministry of Labour. By 2000-2001 the scope of activities of the Ombudsman would also cover ethnic minorities and ethnic discrimination and the Office would be renamed to reflect that change.

10. The prison population in Finland was still slightly decreasing, due to the fact that ever more convicted persons were being ordered to serve their sentences in the form of community service. Of those in prison, about one third had been convicted for offences against life or other violent acts, and about 15 per cent had committed a drug offence. The number of drug offences had considerably increased during the 1990s but seemed to have levelled off. In January 1999, the Directives of the Prison Administration concerning work against intoxicant abuse within the prison system had been adopted for a three-year period, under a new five-part strategy by the Prison Administration aimed at preventing drug offences, decreasing the damage caused by intoxicant abuse and supporting inmates in their efforts to lead a life free of crime and intoxicants. Preparation of a practical guide to work against intoxicants was currently under way. The strategy would continue with instructions for follow-up work, prevention of intoxicant abuse by the staff, and information to prisoners and visitors.

11. In late 1998 a basic programme for the Prison Administration and the Probation Association had been adopted, providing guidelines for correctional treatment and defining the duties and goals of the two services, the values and principles to be addressed and the means of achieving the goals, including short-term policies.

12. Rehabilitation programmes for prisoners had been considerably developed and extended over recent years. They included cognitive skills programmes for all categories of prisoners and a new programme, introduced in 1999, aimed at reducing the risk of repeated offences among sexual offenders. Another programme was being developed for prisoners who had committed violent offences, and a similar programme had already been introduced for young prisoners. The Prison Administration had also further developed an individualized method of assessing prisoners' capacity to work and act.

13. The Prison Department of the Ministry of Justice had sent out a guide dealing with the Roma and health services to the directors of prisons and the senior medical officers of prison mental hospitals. It was intended for both prison staff and prisoners and provided information on the Roma culture and Roma views on health, illness, death and the Roma community. In

addition, following a survey ordered in 1998 on the situation of prisoners of Roma origin, the Prison Personnel Training Centre was publishing a new edition of a study dealing with Roma people and the difficulties they encountered in prison.

14. Despite the Committee's suggestion, the preventive detention of dangerous recidivists had so far not been abolished. Nevertheless, a committee had been appointed by the Government to reform the legislation on imprisonment; one of its tasks was to review the procedure, grounds and nature of such preventive detention. Its report was due in March 2001.

15. The Ministry of the Interior was working on introducing an Act including rules relating to all persons held in custody at police premises, and to their treatment. It would be applied to all persons held in police custody, regardless of the reason for the deprivation of liberty. It was expected to be completed by the end of 2000.

16. Section 47, paragraph 2 of the Aliens' Act, relating to the administrative detention of aliens in Finland, had been amended as of May 1999, providing that an alien placed in detention should be taken to detention facilities especially intended for that purpose as soon as possible. The new Act on the Integration of Immigrants and Reception of Asylum-Seekers, which had entered into force at the same time, stated that a reception centre maintained by the State or a municipality could arrange the detention of asylum-seekers referred to in section 46 of the Aliens' Act. Before introducing such new detention facilities, it was necessary to allocate the funds and plan how the detained aliens would be guarded. A working group comprising representatives of the Ministry of the Interior, the Ministry of Labour and the Ministry of Justice would examine how the legislative provisions could be implemented. It was expected to finish its deliberations in April 2000.

17. As of 1 June 1999, the Enforcement of Sentences Act, the Remand Imprisonment Act, the Coercive Measures Act and the Penal Custody Decree had been amended, and a new Remand Imprisonment Decree had been enacted. The amendments were aimed at effectively preventing drug and intoxicant use and crime in prisons, and introduced rules on searching prisoners and ensuring intoxicant abstinence, as well as more precise provisions on so-called security wards. Preventing the commission of offences increased the security of inmates, relatives and staff. The reform also aimed to increase the likelihood that inmates would cope with subsequent freedom, by placing prisoners for limited periods in rehabilitation centres in the community, or engaging them in some other activity to assist their social reintegration.

18. The Prison Sentence Committee had the task of carrying out an overall reform of the legislation on the enforcement of prison sentences. It was to make proposals for new provisions on the substance of enforcement and release on parole, and to clarify the provisions on prisoners' rights and the powers of prison staff. It would be reviewing the provisions particularly from the point of view of civil rights and human rights norms, and the deadline for its deliberations was 31 March 2001.

19. The City of Helsinki was intending to open a 24-hour clinic for intoxicated persons, under the aegis of the Social Welfare Office, at the beginning of the year 2000. Patients would be seen by doctors or specialized nurses and social welfare officers; however, intoxicated persons who were aggressive and clearly not in need of medical control would still be taken into

police custody. The police were also conducting a pilot experiment aimed at improving the safety of intoxicated persons taken into custody using a so-called "Bio mattress" which transmitted information about the person's vital functions to a monitor located in the duty room.

20. The Ministry of Social Affairs and Health had set up a working group to examine arrangements for the involuntary institutional psychiatric care of minors, and prepare guidelines for the uniform application of the criterion of serious mental disorder as a condition for their admission (section 8, paragraph 2 of the Mental Health Act). It also aimed to organize the care of minors who were dangerous or especially difficult to treat. A Government Bill rewording section 28 of the Mental health Act had also been drafted to specify legal preconditions for restricting the right to self-determination of persons in involuntary psychiatric care, for instance through isolation or restricted contact with other people. It would be presented to Parliament in the spring of 2000.

21. The new Constitution of Finland would enter into force on 1 March 2000. Although the Government had taken note of the Committee's observations, the provisions on fundamental rights in chapter II of the existing Constitution Act, which had been reformed in 1995, had not subsequently been amended and would be included in the Constitution in their current form.

22. The Finnish delegation, which consisted of public officials who were experts in the prevention of acts of torture or other cruel, inhuman or degrading treatment or punishment in their respective fields of administration, would carefully consider and take back to Finland any points of view, wishes or advice the Committee might have. They were prepared to answer questions and explain the report and legislative and other measures taken in connection with the Convention. They looked forward to a fruitful dialogue with the Committee.

23. The CHAIRMAN thanked Mr. Lindholm for drawing the attention of the Committee to recent developments and specific answers to the Committee's questions regarding the second report of Finland.

24. Mr. SØRENSEN (Country Rapporteur) was grateful that Finland was taking the time, during its busy presidency of the European Union, to meet with the Committee and discuss its third periodic report. The report was timely and lived up to all the Committee's guidelines; its contents were also very satisfactory. He thanked Mr. Lindholm for bringing the Committee right up to date. There would be no difficulty finding positive aspects to commend; however there were still a few issues of concern to the Committee.

25. He had two important questions, for instance, regarding prison conditions. Firstly, did Finland use an isolation system in pre-trial conditions? He was referring to prisoners on remand, not in police stations but in prisons awaiting trial; and not to isolation as a punishment, but as a measure to prevent any "polllution" by outside influences whilst the investigation was under way. That had been a crucial area in the Committee's discussions with other Nordic countries. If such a system was used, he had a range of subsidiary questions. Who made the decision on isolation: the police, the prosecutor, or the judge? Did the decision-maker give specific detailed

conditions for the isolation? What degree of isolation was imposed, and how was the decision on the degree of isolation made? Was there a maximum time limit for isolation? How often could isolation be renewed? Was the extension of isolation carefully reviewed by a judge or prosecutor? Were there any statistics available? Furthermore, what was the limit on the length of time that could be spent in pre-trial detention?

26. He also wished to know whether prison rules were translated for foreign prisoners. Concerning article 10 of the Convention, did police officers receive special training in the specific problems of asylumseekers who had been tortured? If so, who provided the training? Finland had a rehabilitation centre in Helsinki for the victims of torture, which could no doubt offer invaluable assistance in that regard. In respect of paragraphs 21 and 22 on the administrative detention of foreigners, were asylumseekers who had not committed any offence placed in police stations or prisons? If so, were they separated from criminals? If not, it would give the public the impression that asylumseekers were potential criminals.

27. On a point of clarification, he said that it was not apparent which thirteenth and fourteenth reports were meant in paragraph 31.

28. He did not share the arguments set out in paragraphs 43-5 on the general provisions of the Penal Code. Pursuant to article 1 of the Convention, one element of torture was that it must be inflicted intentionally, but as far as he could see, that aspect was not covered under Finnish law. It was its intentional nature that made torture unique and so terrible; hence the need for it to be specifically defined in the Finnish Penal Code.

29. He thanked Finland for its continuous generous contributions to the United Nations Voluntary Fund for Victims of Torture.

30. Mr. GONZÁLEZ POBLETE (Alternate Country Rapporteur) said that he was pleased to learn that the Finnish Constitution had recently been amended to include a specific prohibition of torture and that allegations of police misconduct were no longer investigated by those against whom complaints had been made, but by a prosecutor, which ensured impartiality.

31. He did not agree with Finland's explanations of why its legislation did not contain a specific definition of torture, since the provisions of the Finnish Penal Code on assault did not cover all aspects set out in article 1 of the Convention against Torture. Assault was a violation of a person's physical integrity, whereas no provision was made for punishing a violation of a person's emotional integrity. It was important to bear in mind that some cases of torture left no physical trace. The emotional harm resulting from torture must not be allowed to go unpunished.

32. The Convention on Extradition and many bilateral conventions contained a double-jeopardy clause. How did the Finnish courts deal with a request for extradition based solely on the offence of torture when an accused person was in Finland and a court in the country in which the crime had been committed asked Finland to hand that person over?

33. With regard to article 15 of the Convention, while he appreciated the information provided in paragraph 59 to the effect that there were new provisions on criminal procedure emphasizing the oral and immediate nature of the judicial procedure and that a statement entered

in a pre-trial investigation record could not be used as evidence during the trial, Finnish legislation still failed to contain a provision which specifically made statements and evidence obtained under torture inadmissible. Accordingly, there appeared to be insufficient guarantees of compliance with article 15.

34. Mr. SILVA HENRIQUES GASPAR agreed with the previous speaker on the need for a specific definition of torture as a separate offence. There would always be situations in which torture was committed but which could not be covered by other offences. He also endorsed the remarks by Mr. González Poblete on article 15 of the Convention and the absence of procedural rules - similar to the exclusionary rules in common law or the *Beweisverbot* in German law - explicitly prohibiting the use of evidence obtained under duress or torture. Such prohibition must also apply to the preliminary phase of the investigation, which was not adequately covered by the emphasis on the oral and immediate nature of the judicial procedure referred to in paragraph 59.

35. Turning to paragraph 15, where it was stated that some persons were imprisoned for not paying a fine, he inquired whether they were imprisoned because they refused to pay, or because they were unable to pay. Regarding paragraph 23, did the law make provision for regular judicial review of cases of persons placed in psychiatric institutions against their will?

36. Mr. YU Mengjia said that according to a report by the European Committee for the Prevention of Torture (CPT), there were problems in Finland involving certain prisoners ill-treating others who were members of minority groups. Could information be provided on prison conditions in Finland? What was done to prevent certain prisoners from oppressing others? If the Finnish authorities allowed such ill-treatment to go unchecked, it could have grave consequences.

37. Mr. CAMARA, referring to paragraph 54 (a) concerning the accelerated procedure for applying for asylum, asked whether it was sufficient for an applicant to say that he was requesting asylum because he had been tortured or risked being tortured if he returned to his country, or whether he had to provide evidence to substantiate his application. Turning to paragraph 56, which stated that the list of safe countries had been abandoned but would be replaced, he inquired what criteria would be used for establishing the new list. Could it really be said that a country was one hundred per cent safe?

38. Mr. EL MASRY said that a Finnish non-governmental organization, the Finnish League for Human Rights, had reported that the police in the town of Joensuu had consistently failed to take action against skinheads who had committed racist incidents, and that a group of foreigners had requested the Prosecutor-General to investigate the conduct of the police service. Could the delegation comment on that report? The Committee on the Elimination of Racial Discrimination, having discussed the report of Finland in March 1999, had expressed its concern that the Finnish legislation did not provide penalties for organizations which promoted and incited racial discrimination, and had recommended that Finland amend its Penal Code accordingly.

39. The Finnish League for Human Rights had also reported that the Finnish Parliament was currently discussing an amendment to the Police Act which would permit the installation of

listening devices in prison cells. Could the delegation confirm the accuracy of that report and share its views on the subject with the Committee members? According to the report of the European Committee for the Prevention of Torture, the right of access to legal aid was guaranteed in Finland only from the time the investigation began. The State party should ensure the right to legal aid from the moment of arrest.

40. The CHAIRMAN said that jurists from government ministries, and especially those from the Nordic countries, generally considered that it was sufficient if acts of torture were covered by other statutes, so long as they were prohibited. Since one of the members of the Finnish delegation was a member of the Supreme Court, perhaps the Committee could finally prevail upon the delegation that there were overwhelming reasons to create a separate crime of torture. First of all, on a philosophical level, there was a clear moral difference between officials who assaulted people, randomly or otherwise, and those who carried out torture. Secondly, on a practical level, without a separate law on torture it was impossible to make a finding that an act of torture had occurred. If an official were convicted of aggravated assault or assault causing bodily harm, no finding of torture could be reached without offending the principle of legality. At a still more practical level, but one which was absolutely crucial to the Committee, the Government could not meet its conventional obligations to inform the Committee about the status of torture in Finland if there was no law defining torture as an illegal act. Any attempt to do so would necessarily be very subjective. Full implementation of the Convention obliged the State party to enact a separate crime of torture.

41. The delegation of Finland withdrew.

The meeting was suspended at 11.25 a.m. and resumed at 12.05 p.m.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2) (continued)

Workshop on Civil and Political Rights Indicators

42. Mr. MAVROMMATIS, before describing the workshop on human rights indicators, wished briefly to share with the Committee his experiences in two other events he had recently attended. In July, he had taken part in a very interesting forum organized by the University of Potsdam on the duty of States to ensure human rights, including the protection of citizens against human rights violations perpetrated by private actors. During that meeting he had had the opportunity to mention the decision reached by the Committee at its previous session with respect to a case involving the risk of torture by non-governmental entities in Mogadishu, Somalia.

43. The second event had been a two-week seminar organized by the Centre for Human Rights for senior Indonesian Government officials, army, police and political party leaders, with the aim of assisting them in the democratization process and urging them to accede to human rights conventions. He had spoken to participants about the Covenant on Civil and Political Rights and the Convention against Torture. The participants had broadly agreed that what human rights indicators involved was a list of issues on matters which were quantifiable and which could be taken into consideration when making an assessment of the performance and needs of a certain country. Those invited to the seminar had included representatives of the six

human rights treaty bodies, NGOs, the Sub-Commission on the Promotion and Protection of Human Rights, the Commission on Human Rights, and statisticians from the United Nations system with experience in the use of indicators.

44. The participants had been well aware of the criticism which had been levelled at attempts by the United Nations Development Programme (UNDP) to apply indicators, certain countries having expressed great dissatisfaction at receiving what they regarded as low grades. Moreover, they had clearly recognized that most countries already used their own internal economic indicators for many purposes, which lent themselves more to economic, social and cultural considerations than to areas such as the right to life. The position he had expressed, and which had been shared by nearly all those present involved in the propagation of human rights, was that indicators were useful instruments, provided they could be implemented in such a way as to convince States parties that their purpose, rather than to establish "grades", was to assist the monitoring bodies established by the relevant conventions in their task of enhancing the overall human rights situation. The aim was not to criticize countries, but to enhance dialogue and programming in human rights activities.

45. The first part of the seminar had comprised general statements. Some of his personal fears concerning the introduction of indicators had been allayed by the statisticians, who had clearly learned some important lessons from their initial experiences. On the whole, the meeting had tended to focus on indicators relating to the work of the Human Rights Committee. He had personally outlined the differences between such indicators and those relating to torture, and had strongly advocated the need for the Committee against Torture to become involved in the development of indicators as the concerns it addressed were quite distinct from those covered by the Covenant on Civil and Political Rights.

46. After meeting in small groups, the seminar had acknowledged the great difficulty involved in selecting individual human rights as indicators. It was generally realized that, whereas some hope existed, considerable preparatory work would be required before any such indicators could be used as a reliable source of information. Nevertheless, he felt that if such indicators could be prepared for torture, they would considerably facilitate the Committee's work. He would circulate the documents from the seminar to members of the Committee on request.

47. Mr. SØRENSEN said that he would be very interested to receive any such documents. Considerable research was already being done worldwide to devise indicators on torture, in such areas as prevention and programme eradication. Moreover, the effects of torture were closely bound up with medicine, in which indicators had already been in use for a considerable time.

48. Mr. EL MASRI asked whether the seminar had referred to the experience of the United States Congress, which he believed operated a system of indicators under which countries were allocated gradings.

49. Mr. MAVROMMATIS replied that such information had not been made available to the seminar, and was not likely to have been acceptable to it. Fears had been expressed about the possible misuse of indicators to denigrate certain countries, and complaints had been made by developing countries that not enough of their representatives had been invited to attend the seminar or to assist in its preparation.

50. Mr. YU Mengjia asked for more details about the relationship between the general and specialized group stages of the seminar, and about the main trends which had emerged from the overall meeting.

51. Mr. MAVROMMATIS explained that there had first been a general debate, during which the vast majority of participants had expressed the opinion that human rights indicators would be useful, provided they were well prepared and used not to grade or denigrate countries, but as a tool to assist the efforts of bodies such as the Human Rights Committee. The main conclusion of the meeting, following the individual groups' unsuccessful efforts to identify potential indicators, had been that considerable follow-up would be required before any attempt could be made to draft human rights indicators that were acceptable to all.

52. The CHAIRMAN then gave a brief summary of the matters discussed at the 11th meeting of chairpersons of treaty bodies, which he had attended in June. The majority of the items on that agenda did not require immediate action from the Committee, and some had already either been discussed or acted upon by the Committee.

53. Firstly, the Department of Public Information (DPI) had offered to transmit regularly to all the treaty bodies, through their respective secretariats, files of the media coverage of their work at both the national and international levels. He suggested that the Committee request the Secretariat to inform the DPI that the Committee was very interested in taking up the offer.

54. Secondly, the chairpersons had expressed their appreciation for a proposal by the Secretariat that new members of the Committee, and of the other treaty bodies, be given technical briefings to familiarize them with the methodology, policies and jurisprudence relating to their duties as Committee members. He was optimistic that the necessary resources could be made available by the Office of the High Commissioner for Human Rights, and took it that the Committee welcomed the proposal.

55. The final item had related to a concern expressed by the Secretary-General of the United Nations about the impact of globalization on human rights. The Secretary-General's Office was inviting suggestions on how to sensitize supranational, non-governmental corporate entities to international human rights considerations, and how to develop mechanisms for ensuring that such organizations acted in accordance with international human rights values.

Committee members were invited to consider possible solutions, and to make proposals for inclusion in the agenda of the Committee's forthcoming session. Proposals which were adopted would be transmitted to the Secretary-General as the views of the Committee.

56. Mr. SØRENSEN asked whether the chairpersons had given further consideration to the question of having the Committee on the Elimination of Discrimination against Women (CEDAW) meet in Geneva. It seemed incongruous to him that CEDAW was so far removed from the other human rights treaty bodies.

57. The CHAIRMAN replied that the matter had not been discussed.

The meeting rose at 12.45 p.m.